

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
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CC:FIP:B02
PLR-128566-15

Date:
December 22, 2015

LEGEND:

Parent =

Subsidiary =

Manager =

Advisor =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear :

This ruling responds to a letter dated August 27, 2015, and subsequent correspondence, submitted on behalf of Parent and Subsidiary. Parent and Subsidiary request an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to jointly make an election under section 856(l) of the Internal Revenue Code ("Code") to treat Subsidiary as a "taxable REIT subsidiary" ("TRS") of Parent effective Date 1.

FACTS

Parent was formed on Date 2 as a limited liability company under the laws of State. Parent filed a Form 8832, Entity Classification Election, on which Parent elected to be classified as a corporation for federal income tax purposes effective Date 2. On Date 3, Parent filed its initial federal income tax return for the taxable year ended Date 4 on a Form 1120-REIT, U.S. Income Tax Return for Real Estate Investment Trusts, on which Parent elected to be treated as a real estate investment trust ("REIT") under section 856.

Subsidiary was formed on Date 5 as a corporation under the laws of State. Subsidiary is a wholly owned subsidiary of Parent. Parent and Subsidiary intended to file a Form 8875, Taxable REIT Subsidiary Election, to treat Subsidiary as a TRS effective Date 1. Parent and Subsidiary intended to make the TRS election in order to satisfy certain requirements under section 856 with respect to an acquired hotel property.

Parent and Subsidiary were formed by, and are managed by, Manager, a company that invests in real estate, including hotels. Manager engages outside tax professionals for tax advice regarding the entities it manages. Manager engaged Advisor for advice on REIT compliance associated with Parent and Subsidiary.

Parent believed that Advisor was preparing the relevant federal income tax returns and forms required for qualifying Parent as a REIT, which included preparing a Form 8875 to jointly elect, with Subsidiary, to treat Subsidiary as a TRS of Parent. However, Advisor inadvertently failed to prepare or file a Form 8875, an oversight that was not discovered until Date 6.

Advisor prepares quarterly and annual REIT testing for review by Manager. As part of this testing, Advisor maintains an internal checklist showing whether a Form 8832 was filed for a REIT and whether a Form 8875 was filed for a TRS. The checklist for Parent and Subsidiary showed that their Form 8875 had been filed.

In Date 6, Manager requested Advisor's assistance in responding to a due diligence request from a potential buyer of Parent. In gathering the relevant documents, Advisor did not find a copy of the Form 8875 for Parent and Subsidiary. Advisor immediately contacted executives of Manager who were responsible for managing

Parent and Subsidiary. Advisor also contacted the Internal Revenue Service (“Service”) and requested a copy of Subsidiary’s entity module transcript. Advisor reviewed the transcript and determined that a TRS election for Parent and Subsidiary was not filed with the Service. Pursuant to Advisor’s advice, Parent and Subsidiary request an extension of time to file a Form 8875.

Parent and Subsidiary make the following additional representations in connection with their request for an extension of time:

1. The request for relief was filed before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief requested will not result in Parent and Subsidiary having a lower tax liability in the aggregate for all years to which the election applies than they would have had if the election had been timely made (taking into account the time value of money).
3. Parent and Subsidiary do not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time they requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, Parent and Subsidiary did not choose to not file the election.
5. Parent and Subsidiary are not using hindsight in making the decision to seek the relief requested. No specific facts have changed since the due date for making the election that make the election advantageous to the taxpayers.
6. The period of limitations on assessment under section 6501(a) has not expired for Parent and Subsidiary for the taxable year in which the election should have been filed, nor for any taxable year(s) that would have been affected by the election had it been timely filed.

In addition, affidavits on behalf of Parent and Subsidiary have been provided as required by section 301.9100-3(e) of the Procedure and Administration Regulations.

LAW AND ANALYSIS

Section 856(l) of the Code provides that a REIT and a corporation (other than a REIT) may jointly elect to treat such corporation as a TRS. To be eligible for treatment as a TRS, section 856(l)(1) provides that the REIT must directly or indirectly own stock in the corporation, and the REIT and the corporation must jointly elect such treatment. The election is irrevocable once made, unless both the REIT and the subsidiary consent

to its revocation. In addition, section 856(l) specifically provides that the election, and any revocation thereof, may be made without the consent of the Secretary.

In Announcement 2001-17, 2001-1 C.B. 716, the Service announced the availability of new Form 8875, Taxable REIT Subsidiary Election. According to the Announcement, this form is to be used for taxable years beginning after 2000 for eligible entities to elect treatment as a TRS. The instructions to Form 8875 provide that the subsidiary and the REIT can make the election at any time during the taxable year. However, the effective date of the election depends on when the Form 8875 is filed. The instructions further provide that the effective date cannot be more than 2 months and 15 days prior to the date of filing the election, or more than 12 months after the date of filing the election. If no date is specified on the form, the election is effective on the date the form is filed with the Service.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by regulations or by a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) through (c)(1) sets forth rules that the Service generally will use to determine whether, under the particular facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of section 301.9100-2. Section 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in section 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer (i) requests relief under this section before the failure to make the regulatory election is discovered by the Service; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of the Service; or (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election. A taxpayer will be deemed to have not acted reasonably and in good faith if the taxpayer (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section

6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested; (ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c) provides that a reasonable extension of time to make a regulatory election will be granted only when the interests of the Government will not be prejudiced by the granting of relief. Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Section 301.9100-3(c)(1)(ii) provides that the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

CONCLUSION

Based upon the facts and representations submitted, we conclude that Parent and Subsidiary have shown good cause for granting a reasonable extension of time to elect under section 856(l) to treat Subsidiary as a TRS of Parent. The extension of time to make the election is 90 days from the date of this letter.

This ruling is limited to the timeliness of the filing of Form 8875. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Parent otherwise qualifies as a REIT or whether Subsidiary otherwise qualifies as a TRS under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Parent and Subsidiary is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the terms of a power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

K. Scott Brown
K. Scott Brown
Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Financial Institutions and Products)

Enclosures (2):

Copy of this letter
Copy for section 6110 purposes